

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14986 OF 2005

-

ORDER:

-

This Writ Petition is filed aggrieved by the alleged inaction on the part of the 1st respondent- Principal Chief Conservator of Forests in considering the application filed by the petitioner for grant of clearance under Section 2 of the Forest (Conservation) Act, 1980, for quarry lease of black granite in Compartment No.213, of Paradarami Reserve Forest, Chittoor West Division, Chittoor District.

On 26.05.2003 the petitioner made an application for grant of quarry lease of black granite in Compartment No.213, of Paradarami Reserve Forest, Chittoor West Division, Chittoor District, to an extent of 3.000 hectares. The said application was made to the Assistant Director of Mines and Geology, Chittoor, in terms of the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 and the A.P. Minor Mineral Concession Rules, 1966. Since admittedly, the said land was situated in a reserve forest, the petitioner had also submitted a declaration as well as an undertaking including an affidavit given by his brother who was willing to register his land situated in Sy.No.691 and 687 of Kannepalli village of Ananthasagaram Mandal to an extent of Ac.2.91 cents, in favour of Forest Department for afforestation. The said application was forwarded to the 3rd respondent-Divisional Forest Officer, who in turn directed the Forest Range Officer, Chittoor West, to inspect the land. That apart, the 3rd respondent by letter dated 30.09.2003, had also directed the petitioner to send his proposal in full shape to the 1st respondent-Principal Chief Conservator of Forests, Andhra Pradesh as per the Rules under the Forest (Conservation) Act, 1980. Accordingly, the petitioner submitted a fresh application dated 31.10.2003 in the prescribed Pro-forma seeking clearance for quarry lease in Compartment No.213 of Paradarami Reserve Forest. In pursuance of the same, the 1st respondent vide letter dated 17.11.2003 called upon the petitioner to furnish an undertaking for payment of net present value and location map and other particulars, which were complied with by the petitioner on 1.12.2003. Thereafter, the 1st

respondent by letter dated 11.12.2003 directed the 3rd respondent-Divisional Forest Officer, to inspect the area in question, furnish the information together with all the required documents to the Conservation of Forests, Anantapur Circle, who in turn will submit the same to the 1st respondent after duly filling the information as required under Part-III of Form-A. Subsequently, the petitioner was required by the Forest Range Officer, Chittoor West Range, vide notices dated 20.01.2004 and 24.09.2004 to demarcate the mining area as well as the land proposed for compensatory afforestation plantation and submit the sketches. The petitioner states that by that time he had already furnished the required particulars, however, the details were furnished again by letter dated 12.10.2004. Since no further steps were taken, the petitioner addressed a letter 28.06.2005 to the 1st respondent requesting to consider his application on preferential basis with reference to his original application made on 26.05.2003. In response to the same, the 1st respondent vide letter dated 28.06.2005 informed the petitioner that since the application dated 29.08.2003 made by one M/s Shiva Granites, Chittoor, had already been recommended and was under process, the application of the petitioner cannot be considered. The said action is under challenge in this Writ Petition, contending inter alia, that since the petitioner made his application long back on 26.05.2003, much prior to the application of M/s Shiva Granites, which was admittedly made on 29.08.2003, the 1st respondent ought to have considered the application of the petitioner on priority basis and ought to have granted clearance for grant of mining lease as prayed for.

On behalf of the respondents 1 to 4, the Chief Conservator of Forests, Andhra Pradesh, filed a counter-affidavit stating that as per the latest guidelines issued by the Government of India, every user agency who want to use any forest land for non-forest purposes, shall make its proposal in the relevant Form to nodal officer of the concerned State Government along with the requisite information and documents. It is stated that the said guidelines were sent to the Divisional Forest Officer, Chittoor West Division on 18.02.2003. Though the receipt of the application of the petitioner which was forwarded by the Assistant Director of Mines and Geology was admitted, it is stated that the same was returned by the Divisional Forest Officer, Chittoor, with instructions to submit the application direct to the Principal Chief Conservator of Forests, in view of the new guidelines issued by the Central Government. Thereafter, the petitioner submitted a fresh application, which was received in the

Office of the Principal Conservation of Forests only on 6.11.2003. The further particulars were furnished by the petitioner on 11.12.2003. In pursuance thereof, while taking further proceedings, it was found by the Forest Range Officer, Chittoor West, that the area applied by the petitioner was overlapping with the proposed mining area applied by one M/s Shiva Granites, Chittoor. The said fact was explained to the representative of the petitioner in the last week of January, 2004 by the Forest Range Officer, Chittoor West. However, the petitioner failed to respond and did not demarcate the mining area in the field as well as the compensatory forest land. In the circumstances, the Forest Range Officer, Chittoor, submitted a report to the Forest Range Officer, Chittoor West Division, regarding non-compliance of the instructions by the petitioner. Accordingly, a memo dated 7.10.2004 was issued to the petitioner by the Divisional Forest Officer, Chittoor West, to carry out the instructions issued by the Forest Range Officer, Chittoor West by 16.10.2004, failing which the application submitted by the petitioner for grant of clearance will not be considered. The said letter was returned undelivered with an endorsement that the addressee was not available. Hence, the Divisional Forest Officer, Chittoor West Division, submitted a report dated 1.11.2003 to the Principal Chief Conservation of Forests, on the basis of which, the impugned letter dated 28.06.2005 was addressed to the petitioner by the 1st respondent. The plea of the petitioner that he submitted the necessary details as called for by the Divisional Forest Officer and he also informed the change of address has been categorically denied and it was stated that the proposals of M/s Shiva Granites, Chittoor, received in the office of the 1st respondent on 28.09.2003, was registered at SI.No.19, whereas the proposal of the petitioner received only on 6.11.2003 was registered at SI.No.61. Hence, the application of the petitioner cannot be give any priority and the said action of the respondents is in accordance with the statutory Rules.

M/s Shiva Granites, Chittoor, who got themselves impleaded as respondent No.7, filed a counter-affidavit stating that they made an application dated 29.08.2003 before the 1st respondent for grant of mining lease for extraction of black granite over an extent of 5.000 hectares in Compartment No.213 of Paradarami Reserve Forest, Chittoor, complying with all the requirements. The petitioner submitted his application subsequently on 6.11.2003. Therefore, the respondents have rightly processed their application and interference of this Court is not warranted.

I have heard the learned counsel for both the parties and perused the material on

record.

The Forest (Conservation) Act, 1980 (for short “the Act”), which provides for conservation of forest, the matters connected therewith or incidental thereto, made the prior approval of the Central Government mandatory for de-reservation of reserve forest and for use of the forest land for non-forest purposes. Section 2 of the Act, which contains a non-abstente clause, made it clear that the provisions of the Act override the provisions contained in any other law for the time being in force in the State and that no State Government or other authority can direct de-reservation of reserve forest or use of forest land for any non-forest purpose or grant of lease of any forest land to any private person or authority or Corporation or clearance of trees in forest land for the purpose of using it for reafforestation, without the prior approval of the Central Government.

In exercise of the powers conferred by Section 4 of the said Act and in supersession of the earlier Rules made in the year 1981, new set of Rules were made in G.S.R.23(E), dated 10.1.2003. The said Rules in detail prescribe the procedure for submission of the proposals seeking approval of the Central Government under Section 2 of the Act. As per Rule 6, every user agency, who wants to use any forest land for non-forest purposes shall make its proposal in the appropriate form appended to the Rules to the concerned nodal officer authorized by the State Government along with the requisite information and documents, well in advance for taking up of any non-forest activity on the forest land. As per sub-rule (2) of Rule 6, every State Government after receiving the proposal from the user agency and after being satisfied that the proposal requires prior approval of the Central Government under Section 2 of the Act, shall send the proposal to the Central Government in appropriate form within 90 days of the receipt of the proposal from the user agency. As per sub-rule (4) of Rule 6, such proposal involving the forest land up to forty hectares shall be sent to the Chief Conservation of Forests or Conservation of Forests of concerned Regional Office of the Ministry of Environment and Forests. Thereafter, after following the procedure prescribed under Rule 7, with regard to referring the proposal to the advisory committee constituted under Section 3 of the Act, the Central Government on the basis of the advice and after such further enquiry may grant approval or reject the proposal within sixty days of its receipt. It is not in dispute that the said Rules came into force with effect from 10.01.2003 and that the principal Chief Conservation of Forests is the nodal officer authorized by the State

Government. It is also clear from the Rules that the user agency i.e., any person making request for using the forest land for non-forest purposes shall make his proposal in Form A, appended to the Rules, which is applicable for fresh applicant.

In the case on hand, it is not in dispute that the land in Compartment No.213 is situated in reserved forest area, and therefore, the provisions of the Act are applicable and the same cannot be made use for any non-forest purposes without obtaining the prior approval of the Central Government.

It is also not in dispute that the underground mining is a non-forest activity, and therefore, prior approval of the Central Government is essential before a mining lease is granted under the Mines & Minerals (Development & Regulation) Act, 1957. Admittedly, when the petitioner made his application on 26.05.2003, the rules under the G.S.R.No.23(E) dated 10.01.2003 were already in force, and since the petitioner did not make his application in Form A, as appended to the Rules made under the said G.S.R. dated 10.01.2003, he was informed by the 3rd respondent by letter dated 30.09.2003, to make the application in the prescribed Form-A, furnishing all the necessary details and such an application was submitted by the petitioner only on 6.11.2003. However, the record discloses that much prior to that, the 7th respondent made an application in Form A on 29.08.2003. Hence the claim of the petitioner for priority over the application of the 7th respondent has no valid basis. May be that the petitioner submitted his application on 26.05.2003 to the Assistant Director of Mines and Geology, Chittoor, however, the same cannot be taken into consideration so far as clearance by the Government of India under the Act is concerned. The detailed counter-affidavit filed by the Chief Conservation of Forests as well as the material placed on record show that the applications made by both the petitioner and the 7th respondent were processed in accordance with law and they were registered at Sl.Nos.61 and 19 respectively. Hence, the stand taken by the respondents 1 to 6 in the impugned letter dated 28.06.2005 that the application of the petitioner could not be considered since the proposal made by the 7th respondent was already recommended, cannot be found fault with. The action of the respondents 1 to 6 is in accordance with the provisions of the Act as well as the Rules made thereunder, and therefore the interference by this Court is not warranted.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

(G. ROHINI, J.)

January 23, 2006.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14986 OF 2005

January , 2006.

Between

Raghuram Minerals and Granites,

Represented by its Proprietor,

C. Shashi Kumar. .. Petitioner.

And

Principal Chief Conservation of Forests,

Government of A.P., Tuljaguda Complex,

A.P.H.B. Building, M.J. Market,

Hyderabad and six others. .. Respondents